

MINUTE ITEM

This Calendar Item No. C55 was approved as Minute Item No. 55 by the California State Lands Commission by a vote of 3 to 0 at its 02-09-06 meeting.

CALENDAR ITEM C55

A Statewide

02/09/2006

W9777.234

W9777.243

S Statewide

M. Falkner

G. Gregory

CONSIDER APPROVAL OF A LETTER TO THE AMERICAN WATERWAYS OPERATORS REGARDING SAFETY PROVISIONS FOR UNMANNED BARGES UNDER RECENTLY ADOPTED BALLAST WATER MANAGEMENT REGULATIONS

In 2003, the Legislature adopted AB 433, reauthorizing and enhancing California's Marine Invasive Species Program (Program). Public Resources Code (PRC) section 71204.5, which became effective January 1, 2004, required the Commission to adopt regulations governing ballast water management practices for vessels arriving at a California port or place from a port or place within the Pacific Coast Region. The regulations were adopted by the Commission at its June 20, 2005, public meeting and become effective on March 22, 2006.

The Commission's Staff proposes that the Commission accept the attached letter and direct that it be forwarded to the American Waterways Operators West Coast representative.

The regulations contain five sections of management requirements:

- Section 2280 describes the purpose, applicability and date of implementation
- Section 2281 describes the safety exemption
- Section 2282 defines several key terms used throughout the regulation
- Section 2283 describes the process for submission and approval of alternatives
- Section 2284 describes the ballast water management options, which includes exchange in "near coastal waters".

For the great majority of commercial vessels subject to these regulations, near-coastal ballast exchange will be the primary method of ballast water management. Currently, it is the best compromise of efficacy, environmental safety, and economically practicality. Furthermore, according to industry representatives, the vast majority of vessels will be capable of conducting the required exchange, and the management practice will not require any special structural modification to most of the vessels operating in California waters.

At the June 20, 2005 Commission meeting, the shipping industry expressed concern that a small minority of vessels may be significantly impacted by the regulations. In

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particular, vessels that, due to special safety circumstances, are unable to perform ballast water management as described in Article 4.5, section 2284 of the regulation. Ballast water exchange as outlined in the regulations may pose a serious personnel safety concern for tugs and unmanned barges. Safely moving a crew from a small boat to an unmanned barge could pose a serious safety risk. To address this issue, a provision (section 2281) was included in the regulation, ensuring that the safety of the vessel, its crew, or its passengers is not compromised by the management requirements specified in the PRC. At the Commission meeting the industry expressed concern over the interpretation of section 2281. The Commission directed staff to work with industry on the issue, which has resulted in this letter.

Staff recommends that the Commission accept the attached letter and direct that it be transmitted to the American Waterways Operators West Coast representative.

STATUTORY AND OTHER REGULATIONS:

- A. Public Resources Code sections 71200 through 71271.
- B. California Code of Regulations, Title 2, Division 3, Chapter 1, Article 4.6, sections 2280 – 2284.

OTHER PERTINENT INFORMATION:

Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 10561), the Commission Staff has determined that this activity is exempt from the requirements of the CEQA because the activity is not a "project" as defined by the CEQA and the State CEQA Guidelines.

Authority: Public Resources Code Sections 21084 and 14 Cal. Code Regs. 15300.

EXHIBITS:

- A. "LETTER TO AMERICAN WATERWAYS OPERATORS"

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED

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BY PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14,
CALIFORNIA CODE OF REGULATIONS, SECTION 15378

2. ACCEPT, AS THE CALIFORNIA STATE LANDS COMMISSION'S LETTER TO THE AMERICAN WATERWAYS OPERATORS REGARDING SAFETY PROVISIONS FOR UNMANNED BARGES UNDER RECENTLY ADOPTED BALLAST WATER MANAGEMENT REGULATIONS THE DOCUMENT IN EXHIBIT A
3. AUTHORIZE THE COMMISSION STAFF, PRIOR TO SUBMISSION TO THE AMERICAN WATERWAYS OPERATORS, TO MAKE SUCH NONSUBSTANTIVE CHANGES IN THE LETTER AS ARE NECESSARY TO CLARIFY THE INFORMATION PRESENTED.
4. DIRECT STAFF TO TRANSMIT THE LETTER, SUBSTANTIALLY IN THE FORM ATTACHED AS EXHIBIT A, TO THE AMERICAN WATERWAYS OPERATORS.

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Mr. Jason A. Lewis
The American Waterways Operators
Pacific Region
Bank of America Tower
701 5th Avenue, Suite 4261
Seattle, Washington 98104

Dear Mr. Lewis,

In response to the continuing conversations with the staff of the State Lands Commission (Commission) and your letter of January 9, 2006, the Commission offers the following in regard to unmanned barges and the Marine Invasive Species Act (Act).

The Act requires that the Commission adopt regulations governing ballast water management practices for vessels arriving at a California port or place from a port or place within the Pacific Coast Region. The Commission has adopted such regulations and they will go into effect on March 22, 2006.

Your letter and letters received from your members express concern over the safety of conducting ballast water exchange operations on unmanned tank barges in near-coastal waters. The Commission shares your concern and, as a result, implemented Section 2281 Safety of Ballasting Operations in Article 46. That provision states that:

“The master, operator or person in charge of a vessel is not required to conduct a ballast water management practice, including exchange, if the master determines that the practice would threaten the safety of the vessel, its crew, or its passengers because of adverse weather, vessel design limitations, equipment failure, or any other extraordinary conditions.”

At the Commission meeting on June 22, 2005 where these regulations were adopted, you and members of your industry expressed concern over the interpretation of Section 2281. The Commission directed staff to work with you and other members of your industry on the issue.

The Commission acknowledges that conducting a ballast water exchange of an unmanned barge in open ocean and near-coastal waters presents safety concerns for the barge, tug and crew members due to vessel design limitations. The Commission will direct its staff to accept ballast water reports for voyages of unmanned barges where the master, operator, or person in charge of the vessel states that no ballast water exchange was conducted due to safety concerns.

Other methods of ballast water management such as discharge of ballast water to a reception facility approved by the Commission and use of an alternative,

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environmentally sound method that has been approved the Commission or the United States Coast Guard are not currently available. Should they become available in the future, the regulations require that your industry use such management practices.

We wish to remind you of your responsibilities under Subsection 2281 (b) (2) of the regulations which states:

"If a determination (safety) described in subsection (b)(1) is made, the master, operator, or person in charge of the vessel shall take all feasible measures, based on the best available technologies economically achievable, that do not compromise the safety of the vessel to minimized the discharge of ballast water containing nonindigenous species into the waters of the state, or waters that may impact the wasters of the state."

The Commission also acknowledges the industry's efforts to minimize the possibility of the introduction of invasive species in that unmanned barge operators will, whenever feasible:

- Retain ballast water onboard the barge;
- Discharge ballast water in the same location from which it was taken;
- Release the minimum amount of ballast water necessary to ensure safe loading and unloading of cargo; and
- Work with Commission staff on developing new ways to manage ballast water including, but not limited to, new treatment technologies, shore side reception facilities, and new methods for retaining ballast water onboard.

We ask that your members provide Commission staff with the names, official numbers and other identifying information for their unmanned barges that may enter California waters.

This letter does not exempt your industry from any provisions of the Act or any regulations promulgated under its authority.

cc: John Browning
Southern California Area Manager
Sause Bros. Inc.

Mr. George C. Clark
Director, Safety & Regulatory Affairs
Harley Marine Services, Inc

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John Crawford
Manager, Contingency Planning & Compliance
Foss Maritime

Mr. Doug Houghton
General Manager
Westoil Marine Services

Mr. Tim Kinkopf
Marine Operations Manager
Northland Services

Mr. Trent Newlon
Barge Operations Manager
Public Service Marine, Inc.

Mr. Chris Swan
General Manager
Starlight Marine Services, Inc.

Mr. R. Stephen Wilson
Director, Health, Safety and Environmental Affairs
Crowley Maritime Corporation